

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of

Restoring Internet Freedom

WC Docket No. 17-108

SUPPORT OF MOTION OF INCOMPAS TO MODIFY PROTECTIVE ORDERS

Public Knowledge supports the motion of INCOMPAS¹ that certain protective orders² in recent merger proceedings be modified to allow parties and the Commission to consider evidence relevant to this proceeding.

In those proceedings, participants developed a record of evidence showing the incentives of broadband providers to engage in discriminatory behavior, the relationship and incentives between broadband providers and content and service providers, the incentives that result from vertical integration, and other matters.

¹ Motion of INCOMPAS to Modify Protective Orders, Restoring Internet Freedom, WC Docket No. 17-108 (July 17, 2017).

² See Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, Order, 30 FCC Rcd. 10360 (2015); Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses Authorizations, Second Amended Modified Joint Protective Order, 29 FCC Rcd. 11864 (2014); Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Joint Protective Order, 29 FCC Rcd. 6047 (2014), modified by 29 FCC Rcd. 11883 (2014), amended by 29 FCC Rcd. 13616 (2014), amended by 29 FCC Rcd. 13810 (2014); Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, Protective Order, 25 FCC Rcd. 2133 (2010); Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, Second Protective Order, 25 FCC Rcd. 2140 (2010).

This evidence is directly relevant to the Commission's consideration of Open Internet rules, and allowing it to be used in this proceeding, subject to confidentiality protections, will better allow both participants and the Commission to fully appreciate the facts of the broadband marketplace.

In addition to permitting advocates who have signed the protective orders to use confidential materials in presentations to the Commission, modification of the protective orders would allow parties who have signed the orders to discuss confidential material between themselves, to better ensure that their advocacy is responsive to the Commission's concerns.

Granting this motion would not unduly favor either critics or supporters of the Restoring Internet Freedom NPRM, because parties on both sides of the debate who have signed the protective orders would be equally free to use covered material in presentations to the Commission. However, granting the motion would partially correct one asymmetry: companies who have submitted information to the Commission subject to a protective order remain free at any time to use that information as they wish. This means that a company could selectively use elements of past confidential filings that support its case, while leaving the rest out. If the Commission grants this motion, other parties who have signed the protective orders would be able to supply missing context, in a confidential manner.

For these reasons, the motion of INCOMPAS should be granted.

Respectfully submitted,

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